

RHODE ISLAND PUBLIC DEFENDER

160 Pine Street, Providence, Rhode Island 02903

TELEPHONE: (401) 222-3492

FAX: (401) 222-3287

EMAIL: info@ripd.org

WEBSITE: www.ripd.org

TESTIMONY OF THE RHODE ISLAND PUBLIC DEFENDER (RIPD)

REGARDING 2021—H 6122, ARTICLE 13, HUMAN SERVICES

Scheduled for Hearing Before the House Finance Committee on

Thursday, April 8, 2021 at 4:00 p.m.

SECTION 1. Amendments to RIGL Sec. 12-19-14

The RIPD supports these amendments for the following reasons:

- It is well publicized that Rhode Island has one of the highest rates of people on probation per capita in the nation. That fact plus a Violation of Probation system that presumptively holds without bail most violators of probation in regular court contributes to the large awaiting trial population at the Adult Correctional Institute. Many of these temporary holds are unnecessary, do not impact public safety, are an inefficient use of taxpayer dollars and cause more instability for the probationer rather than promote rehabilitation. Section 1 seeks to differentiate between technical violators and substantive violent offenders. Under the proposed amendments violent offenders may continue to be held without bail yet technical violators must present a clear and articulable public safety risk before they can be held without bail.
- Over the years the RIPD has seen an increased use of pre-adjudication detention especially in cases where a violation of probation is alleged. The RIPD supports the changes made to this paradigm in SECTION 1 which addresses the misconception that while pre-adjudication detention is permitted it should not be presumptive pending the resolution of a violation of probation.
- These changes are effectuated by discouraging the use of detention when:
 - a technical, non-criminal violation of probation is alleged such as a failure to report a change of address, maintain employment, or pay court costs
 - a criminal violation of probation is alleged that is not a 'crime of violence'

- The RIPD would suggest clarifying language be inserted at p.1, line 17, regarding what is a 'crime of violence'. The General Laws contain several definitions of 'crime of violence' and not specifying which one is applicable will lead to confusion and misapplication. The RIPD is willing to work with stakeholders to make this suggested change.

SECTION 2. Amendments to RIGL Sec. 13-8-14.2

The RIPD supports these amendments for the following reasons:

- This section recognizes and creates special considerations for parole unique to juveniles who commit crimes and are waived to the adult court. It establishes that the Parole Board shall consider the following when considering an application for parole in such cases:
 - A review of educational and court documents
 - Participation in available rehabilitative and educational programs while in prison
 - Age at the time of the offense
 - Immaturity at the time of the offense
 - Home and community environment at the time of the offense
 - Efforts made toward rehabilitation
 - Evidence of remorse
 - Any other factors or circumstances the Board considers relevant
 - All relevant records and information in the possession of any state official or agency relating to the board's consideration of these factors
- The RIPD is supportive of these sensible changes which incorporate the holdings of several United States Supreme Court decisions grounded in our increased understanding of the negative manifestations of adolescent brain development and its impact on juvenile thought processes and behavior. These cases prescribe the factors that should be used in cases where a serious crime is committed by a juvenile sentenced to adult prison.
 - For example, see, *Montgomery v. Louisiana*, 136 S. Ct. 718, 732-37 (2016); *Miller v. Alabama*, 567 U.S. 460 (2012) holding that:
 - children are constitutionally different from adults for sentencing purposes

- a lack of maturity and underdeveloped sense of responsibility lead to recklessness, impulsiveness, and heedless risk-taking
- children are more vulnerable to negative influences and lack ability to extricate themselves from horrific, crime-producing settings
- children are more amenable to rehabilitation and a child's actions are less likely to be evidence of irretrievable depravity therefore sentencing factors must include the unique characteristics of juvenile defendants in order to issue a fair and individualized sentence.

SECTION 3. Amendments to RIGL Sec. 13-8-11

The RIPD supports these amendments for the following reasons:

- Incentives such as 'good time' credits and opportunities for parole play an important role in the rehabilitative process encouraging those who are incarcerated to avail themselves of institutional programs and other opportunities for rehabilitation and successful re-entry into society. The changes made to existing law in this section provide similar opportunities to those who are on parole by shortening the length of parole supervision as a result of good and productive behavior.

SECTION 3. Amendments to RIGL Sec. 13-8-13

The RIPD supports these amendments for the following reasons:

- The RIPD supports this sensible amendment to existing parole law which allows an inmate sentenced to the ACI for a crime committed prior to their 22nd birthday to become eligible for parole consideration after having served 10 years of their sentence.
- This amendment is grounded in our increased understanding of adolescent brain development and a series of United States Supreme Court decisions striking down on constitutional grounds a variety of state sentencing schemes applicable to juveniles. Therefore, please refer to the comments made, supra, in connection with "SECTION 2. Amendments to RIGL Sec. 13-8-14.2."
- Recent research reveals that the negative manifestations of adolescent brain development and its impact on juvenile thought processes and behavior extends to ages 21-25.

SECTION 3. Amendments to RIGL Sec. 13-8-18; 18.1

The RIPD supports these amendments for the following reasons:

- Consistent with SECTION 1. Amendments to RIGL Sec. 12-19-14, supra, and the changes it made to existing law regarding technical violations of probation, these changes also streamline the process when a technical violation of parole is alleged. It does so by allowing a parole officer to make a summary recommendation to the Parole Board about the disposition of the violation, which if agreed to by the parolee, will result in an expedited resolution of the violation.

SECTION 4. Amendments to RIGL Sec. 13-8.1-1; 2; 3; and 4

The RIPD supports these amendments for the following reasons:

- These amendments make sensible changes to current parole law and enhance the possibility of parole for inmates who are elderly or suffer from cognitive impairment.
- The RIPD believes that such changes are necessary given the aging population at the ACI especially those serving lengthy sentences.

SECTION 7. Amendments to RIGL Sec. 42-56-24

The RIPD supports these amendments for the following reasons:

- Rhode Island has one of the highest probation rates in the nation both in rates per capita and length of time. These amendments would provide a meaningful way to decrease inefficient probation supervision of probationers not needing supervision and focus on those who truly need supervision.
- As was said in connection with SECTION 3. Amendments to RIGL Sec. 13-8-11, supra, incentives play an important role in the rehabilitative process. Those amendments would incentivize participation in rehabilitative programs and good behavior by allowing them to serve as a basis to shorten the length of parole supervision.
- The amendments here are nearly identical, making similar procedures and mechanisms available to shorten the length of probation.

QUESTIONS, COMMENTS, OR CONCERNS?

PLEASE CONTACT:

**Michael A. DiLauro
Assistant Public Defender //
Director of Training & Legislative Liaison
160 Pine Street
Providence, RI 02903
401-222-3492 // 401-222-1526 [PRIVATE LINE]
401-487-3644 [CELL] // 401-222-3289 [FAX]
mdllauro@ripd.org [E-MAIL // WORK]**